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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 23 2009

Uniform Issue List: 402.08-00

SE: T: EP: RA: T1

Legend:

Taxpayer A =

Plan B =

Account C =

Financial Institution D =

Account E =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear

This letter is in response to a request for a letter ruling dated February 9, 2009, as supplemented by additional e-mail correspondence dated May 19, and June 1, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 70, represents that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error by Financial Institution D which precluded her from rolling over Amount 4 to an individual retirement account (IRA). Taxpayer A further represents that Amount 4 has been not used for any purpose.

Taxpayer A participated in Plan B, a cash or deferred arrangement under section 401(k) of the Code. On or about September 12, 2006, Taxpayer A received a distribution of Amount 1 from Plan B. On or about September 15, 2006, Taxpayer represents that she went to Financial Institution D to deposit Amount 2. Taxpayer requested that Amount 3 be placed in her personal savings account and that Amount 4 be used to purchase 4 certificates of deposit ("CDs") in an IRA. In February of 2007, Taxpayer A received a Form 1099 which reported interest income on these CDs (Account C). Taxpayer A immediately contacted Financial Institution D and was informed the CDs were non-IRA CDs. After further discussions, Financial Institution D, on or about February 27, 2007, transferred Amount 4 from the non-IRA CDs (Account C) to IRA CDs (Account E). By letter dated April 12, 2007, Financial Institution D indicated that it had agreed to transfer Amount 4 to IRA CDs (Account E).

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 4.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 4 was due to an error by Financial Institution D.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 4 from Plan B. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 4, contributed to IRA CDs (Account E), will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code..

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), , at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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